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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,581	09/25/2003	Barrie Kovish	03SW168 / ALBRP313US	7455

7590 05/31/2006
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EXAMINER

HIRL, JOSEPH P

ART UNIT	PAPER NUMBER
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2129

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/670,581	Applicant(s) KOVISH ET AL.	
	Examiner Joseph P. Hirl	Art Unit 2129	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>073004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-50 are pending in this application.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-50 are rejected under 35 U.S.C. § 101 for nonstatutory subject matter. The computer system must set forth a practical application of § 101 judicial exception to produce a real-world result. Benson, 409 U.S. at 71-72, 175 USPQ at 676-77. The invention is ineligible because it has not been limited to a substantial practical application.

In determining whether the claim is for a “practical application,” the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather that the final result achieved by the claimed invention is useful, tangible and concrete. If the claim is directed to a practical application of the § 101 judicial exceptions producing a result tied to the physical world that does not preempt the judicial exception, then the claim meets the statutory requirement of 35 U.S. C. § 101.

The invention must be for a practical application and either:

- 1). specify transforming (physical thing – article) or
- 2). have the Final Result (not the steps) achieve or produce a
useful (specific, substantial and credible),
concrete (substantially repeatable / non unpredictable), and
tangible (real world / non abstract) result
(tangibility is the opposite of abstractness).

A claim that is so broad that it reads on both statutory and non-statutory subject matter, must be amended, and if the specification discloses a practical application but the claim is broader than the disclosure such that it does not require the practical application, then the claim must be amended.

Claims that relate to a high-speed data collection component that collects data at a rate of at least 100 samples per second per tag, a trend server that process the collected data, and the A/I component is operable to determine and/or infer priority of the data, rendering high-resolution output data on a user interface are not statutory.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-50 rejected under 35 U.S.C. 102(e) as being anticipated by Hsiung et al (USPubN 2003/0144746, referred to as **Hsiung**).

Claims 1, 25, 41

Hsiung anticipates a high-speed data collection component that collects data at a rate of at least 100 samples per second per tag (**Hsiung**, Abstract; Fig. 1; ¶2; ¶414; Examiner's Note (EN): monitor has the ability to change the time scale to accommodate the disclosed sampling rate; while the adjustment does not change the rate, it does indicate that a high speed rate is available and the applicant's specificity of samples is functionally non distinct from the prior art); an RTRm component that indexes data (**Hsiung**, ¶188; EN: run time reduction is achieved by indexing); a trend server that processes the collected data (**Hsiung**, Fig. 1); and a rendering component that seamlessly renders the processed data (**Hsiung**, Fig. 1, ¶144; EN:).

Claims 2, 26

Hsiung anticipates, the high-speed data collection component comprising at least one programmable logic controller (PLC) (**Hsiung**, Fig. 1; EN: contained in the server).

Claims 3, 27

Hsiung anticipates the high-speed data collection component comprising at least one "soft" programmable logic controller (PLC) (**Hsiung**, Fig. 1; EN: contained in the server).

Claim 4, 28, 43

Hsiung anticipates, the high-speed data collection component samples data at a rate between 100 and 1000 samples per second per tag (**Hsiung**, Fig. 1; ¶2; ¶414; EN: monitor has the ability to change the time scale to accommodate the disclosed sampling rate; while the adjustment does not change the rate, it does indicate that a high speed rate is available and the applicant's specificity of samples is functionally non distinct from the prior art).

Claim 5, 29, 45

Hsiung anticipates, the high-speed data collection component samples data at a rate between 100 and 300 samples per second per tag (**Hsiung**, Fig. 1; ¶2; ¶414; EN: monitor has the ability to change the time scale to accommodate the disclosed sampling rate; while the adjustment does not change the rate, it does indicate that a high speed rate is available and the applicant's specificity of samples is functionally non distinct from the prior art).

Claim 6, 30

Hsiung anticipates, the high-speed data collection component samples data at a rate between 300 and 500 samples per second per tag (**Hsiung**, Fig. 1; ¶2; ¶414; EN: monitor has the ability to change the time scale to accommodate the disclosed sampling rate; while the adjustment does not change the rate, it does indicate that a high speed rate is available and the applicant's specificity of samples is functionally non distinct from the prior art).

Claim 7, 31

Hsiung anticipates, the high-speed data collection component samples data at a rate between 500 and 1000 samples per second per tag (**Hsiung**, Fig. 1; ¶2; ¶414; EN: monitor has the ability to change the time scale to accommodate the disclosed sampling rate; while the adjustment does not change the rate, it does indicate that a high speed rate is available and the applicant's specificity of samples is functionally non distinct from the prior art).

Claim 8

Hsiung anticipates, a buffer that temporarily stores data (**Hsiung**, Fig. 1; ¶481).

Claims 9, 36

Hsiung anticipates the trend server comprising an artificial intelligence (A/I) component associated with the buffer that determines and/or infers whether data requires buffering (**Hsiung**, Fig. 1; ¶481; EN: ¶ 8. applies; for this application A/I will be knowledge representation and the system logic will represent the structure of the knowledge).

Claim 10

Hsiung anticipates the A/I component comprising implicitly and/or explicitly trained classifiers (**Hsiung**, Fig. 1; ¶481; EN: ¶ 8. applies; for this application A/I will be knowledge representation and the system logic will represent the structure of the knowledge that has been explicitly trained).

Claim 11

Hsiung anticipates the A/I component facilitates dynamic adjustment of buffer size via proactive analysis of a data stream the A/I component comprising at least one prognostic analysis algorithm to determine and/or infer whether data requires buffering.

Claim 12

Hsiung anticipates the A/I component facilitates dynamic adjustment of a sample rate (Hsiung, Fig. 1; ¶481; EN: ¶ 8. applies; such is the result of time lags and the use of a buffer to match time stamps).

Claim 13

Hsiung anticipates the A/I component comprising at least one probabilistic analysis algorithm to determine and/or infer whether data requires buffering (Hsiung, Fig. 1; ¶481; ¶234).

Claim 14

Hsiung anticipates the A/I component comprising at least one prognostic analysis algorithm to determine and/or infer whether data requires buffering (Hsiung, Fig. 1; ¶481; EN: ¶ 8. applies; such is the result of time lags and the use of a buffer to match time stamps).

Claim 15

Hsiung anticipates the A/I component comprising at least one utility-based analysis algorithm to determine and/or infer whether data requires buffering (Hsiung, Fig. 1; ¶481; EN: ¶ 8. applies; such is the result of time lags and the use of a buffer to match time stamps).

Claim 16

Hsiung anticipates the at least one utility-based analysis algorithm assesses information associated with user preference-based cost-benefit analysis (**Hsiung**, ¶285; EN: the cost benefit is related to the Web).

Claim 17

Hsiung anticipates the preference-based cost-benefit analysis is based at least in part on a determination and/or inference regarding reconciliation of system resource expenditure with a desire for a high-resolution rendering of data (**Hsiung**, ¶262).

Claim 18

Hsiung anticipates the A/I component is operable to determine and/or infer priority of the data (**Hsiung**, ¶76).

Claim 19

Hsiung anticipates the A/I component employs a user profile to make inferences regarding rendering data to a user (**Hsiung**, ¶287; EN: again for this application A/I will be knowledge representation and the results from system logic or algorithm will represent the profile).

Claim 20

Hsiung anticipates the A/I component employs historical user information to make inferences regarding rendering data to the user (**Hsiung**, ¶262).

Claim 21

Hsiung anticipates a Human Machine Interface (**Hsiung**, ¶237).

Claims 22, 37

Hsiung anticipates at least one of a fixed Human Machine Interface, a tethered portable Human Machine Interface, and a wireless Human Machine Interface (**Hsiung, ¶237**).

Claim 23

Hsiung anticipates comprising a high-speed time series data analysis component operably coupled to the trend server and the Human Machine Interface (**Hsiung, ¶237**).

Claim 23.

Hsiung anticipates the Human Machine Interface comprises at least one of a fixed Human Machine Interface, a tethered portable Human Machine Interface, and a wireless Human Machine Interface (**Hsiung, ¶237**).

Claims 24, 40

Hsiung anticipates the RTRm component provides performance gains that are directly proportional to the number of indexed data points (**Hsiung, ¶155**).

Claim 32, 34, 35

Hsiung anticipates the high-resolution data is processed via employing a trend server (**Hsiung, Fig. 1**).

Claims 33, 46

Hsiung anticipates the processing of the high-resolution data is effectuated by at least one of batching the data and buffering the data (**Hsiung, ¶155; EN: ¶8**; buffering the data represents holding the data for later use and batching the data also represents holding the data for later use).

Claim 38

Hsiung anticipates the high-resolution output data is rendered seamlessly (Hsiung, Fig. 1, ¶144).

Claims 39, 49

Hsiung anticipates, the Human Machine Interface presents a scroll bar to permit a user to seamlessly view historical data (Hsiung, ¶144; EN: such would be a browser viewing data).

Claim 42

Hsiung anticipates the means for collecting high-resolution data comprising at least one of a hardware means and a software means (Hsiung, Fig. 1).

Claim 47

Hsiung anticipates the means for processing high-resolution data comprising means for sampling and indexing the high-resolution data (Hsiung, ¶188; ¶414; EN: monitor has the ability to change the time scale to accommodate the disclosed sampling rate; while the adjustment does not change the rate, it does indicate that a high speed rate is available).

Claim 48

Hsiung anticipates the means for rendering high-resolution data comprising at least one of a fixed means, a tethered portable means, and a wireless means (Hsiung, Fig. 1).

Claim 50

Hsiung anticipates the means for rendering high-resolution data comprising means for presenting a seamless display to a user (**Hsiung**, Fig. 1; EN: ¶8 applies; electronic displays incorporate a seamless trace to generate the illustration).

Examination Considerations

5. The claims and only the claims form the metes and bounds of the invention.

"Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

6. Examiner's Notes are provided with the cited references to prior art to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

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7. Unless otherwise annotated, Examiner's statements are to be interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the disclosure constitute, on the face of it, the basis and such would be obvious to one of ordinary skill in the art, establishing thereby an inherent prima facie statement.

8. Examiner's Opinion: ¶¶ 5.-7. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Conclusion

9. The prior art of record and not relied upon is considered pertinent to applicant's disclosure.

- Holcombe, USPubN 2004/0024483
- Chapman et al, USPubN 2004/0021679
- Silverbrook, USPN 6,618,117
- Kreidler et al, USPubN 2003/0014322
- Woram, USPN 6,728,262
- Scholl et al, USPN 6,145,001
- Kreidler et al, USPubN 2003/0023336
- Weber et al, USPubN 2003/0158615
- Birchenough et al, USPN 6,615,091

10. Claims 1-50 are rejected.

Correspondence Information

11. Any inquiry concerning this information or related to the subject disclosure should be directed to the Primary Examiner, Joseph P. Hirl, whose telephone number is (571) 272-3685. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, David R. Vincent can be reached at (571) 272-3080.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,
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(located on the first floor of the south side of the Randolph Building);

or faxed to:

(571) 273-8300 (for formal communications intended for entry.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

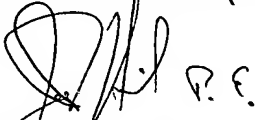
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you have any questions on access to Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll free).

A handwritten signature in black ink, appearing to read 'J. P. Hirl', with a stylized flourish at the end.

Joseph P. Hirl
Primary Examiner
May 25, 2006